IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.425 of 2005
Date of decision:12.10.2006

The Commissioner of Income Tax-I, Amritsar

....Appellant

versus

M/s. OCM India Limited, Amritsar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate for the appellant.
Ms.Radhika Suri, Advocate for the respondent.

JUDGMENT:

1. This appeal has been preferred by the revenue against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No.235(ASR)/2004, in respect of assessment year 1992-93, proposing following substantial question of law:-

> "Whether on the facts and in the circumstances of this case, ITAT is right in law in setting aside CIT(A) order on the ground that notices issued under section 143(2)/ 142(1) were beyond time provided under section 143(2) (ii) ignoring the provisions of section 153(2) of Income Tax Act, 1961 which refer to the date of issue of notice under section 148 for reckoning such time limit?"

2. The Assessing Officer completed assessment under section 143(3) of the Income Tax Act, 1961 (for short, 'the Act') in the case of the assessee on 25.1.1995 at Nil income. However, on 18.5.2001, notice under section 148 of the Act was issued alleging escapement of income. The

assessee filed its return in response to the said notice on 19.6.2001. The Assessing Officer issued notice under section 143(2) of the Act on 17.3.2003. Thereafter, assessment was completed on 28.3.2003 on a total income of Rs.79723/- under section 143(3) read with section 147 of the Act.

3. The assessee preferred an appeal submitting that as per Proviso to Section 143(2)(ii) of the Act, notice could not be served on the assessee after 12 months of the end of the month on which return was furnished. The assessee having furnished the return on 19.6.2001, notice issued on 17.3.2003 was beyond time. This contention was rejected by the CIT(A) on the ground that notice under section 147 of the Act having already been issued within time, notice under section 143(2) of the Act was only to make the assessee aware of intention of making assessment after verification or scrutiny and such a notice was not governed by the limitation specified under Section 143(2) but by limitation specified under section 147 of the Act read with section 153 of the Act.

4. Learned counsel for the Revenue submitted that once assessment was re-opened under section 147 of the Act, limitation prescribed under Proviso to Section 143(2) of the Act was not applicable and to clarify the position, the amendment has also been made in Finance Act 2006 w.e.f 1.10.1991. The view taken by the Tribunal relying upon contrary judicial opinion could not be sustained. Learned counsel for the assessee, though conceded that in view of subsequent amendment, Proviso to Section 143(2) could no longer be invoked but the notice was required to be within the limitation prescribed under section 147 of the Act.

5. This aspect of the matter has not been gone into by the Tribunal as the appeal was accepted on the other issue. In the absence thereof, we do not express any opinion on this question.

6. For the above reasons, answer to the question raised is rendered in favour of the revenue and against the assessee and it is held that bar contained in Proviso to Section 143(2) of the Act could not be invoked to the re-assessment under section 148 of the Act in view of amendment by Finance Act 2006. We do not express any opinion on the question sought to be raised by the assessee in absence of any finding recorded by the Tribunal. As other issues raised in the appeal before the Tribunal have not been gone into, we deem it appropriate to remand the case to the Tribunal for fresh

decision in accordance with law.

7. The appeal is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

Oct. 12, 2006 (Rajesh Bindal)
'gs' Judge